

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

WASTEWATER PRETREATMENT PROGRAM INTERLOCAL AGREEMENT

THIS WASTEWATER PRETREATMENT PROGRAM INTERLOCAL AGREEMENT (hereafter AGREEMENT), is made and entered into this ____ day of ____, 2013 by and between the COUNTY OF DURHAM, a North Carolina County (hereafter "COUNTY"), party of the first part; and the CITY OF DURHAM, a North Carolina Municipal Corporation (hereafter "CITY"), party of the second part.

WITNESSETH:

THAT WHEREAS, the COUNTY owns and operates a publicly owned treatment works (POTW) consisting of a sewer collection system and the Triangle Wastewater Treatment Plant; and

WHEREAS, the CITY owns and operates a POTW, which includes a sewer collection system which discharges to the COUNTY's POTW; and

WHEREAS, the CITY and the COUNTY both have pretreatment programs to govern users of their POTWs; and

WHEREAS, the CITY and the COUNTY agree that the most effective way to manage the quality and quantity of wastewater from the CITY POTW contributory to the COUNTY POTW is for the CITY to administer the pretreatment program for users of the CITY POTW with COUNTY concurrence on SIU permits for those users which are contributory to the COUNTY POTW; and

WHEREAS, this AGREEMENT is authorized by NCGS Chapter 153A, Section 278 and Chapter 160A, Section 461.

NOW THEREFORE, in consideration of the premises and the respective rights, powers, duties, and obligations hereinafter set forth, the parties agree as follows:

1. PURPOSE

The purpose of this AGREEMENT is to set forth the terms and conditions pursuant to which the CITY will control the wastewater from users of the CITY Collection System and contributory to the COUNTY POTW.

2. EFFECTIVE DATE / TERM OF AGREEMENT

This AGREEMENT shall become binding upon the parties hereto on ____, 2013, and shall remain in effect until ____, 2018.

3. COUNTY'S OBLIGATIONS AND REPRESENTATIONS

3.1 The COUNTY, in the event of a crisis or emergency, shall act independently regarding the operation of the COUNTY POTW for the protection of the public health, safety and welfare and for the protection of the environment. The COUNTY will inform the CITY regarding any situations or actions that will affect the flow of wastewater to the COUNTY POTW from the CITY. The CITY will be responsible for interaction with CITY customers in such an event.

- 3.2 The COUNTY shall include significant industrial user mass loading in its headworks analysis and allocation table and shall provide the CITY a POTW Director signed and dated copy after SIU permit concurrence.
- 3.3 The COUNTY shall provide the CITY with a copy of its headworks analysis and the load rates for significant and local industrial user determination.

4. CITY'S OBLIGATIONS AND REPRESENTATIONS

- 4.1 The CITY shall administer the pretreatment program for all CITY users. The pretreatment program consists of the industrial waste survey issuance and evaluation, Significant Industrial User (SIU) status determination, SIU permit issuance, sampling and monitoring permitted wastewater discharges, SIU facility inspections, SIU permit and sewer use ordinance enforcement, issuance of authorization to construct for SIU wastewater discharges, pretreatment program reporting to the State, spill and slug control, illicit discharge monitoring, and review of commercial and industrial site development and building construction plans. General or local wastewater discharge permits may be issued by the CITY for users who are not SIUs but who have the potential of negatively impacting either POTW.
 - 4.1.1 The CITY shall provide a copy of their industrial waste survey (IWS) upon submission to the pretreatment program approval authority within NC Department of Environment and Natural Resources. The City and County will correspond on an ongoing basis regarding information collected in the IWS.
 - 4.1.2 The CITY shall provide the COUNTY an electronic copy of all pretreatment program correspondence related to CITY users contributory to the COUNTY POTW.
 - 4.1.3 The CITY shall provide the COUNTY with a draft of SIU discharge permits for CITY users contributory to the COUNTY POTW 30 days before issuing the permit.
 - 4.1.4 If any updates to the COUNTY headworks analysis and allocation table indicate a different allowable loading, within 30 days of receipt of information the CITY shall re-open the permits issued to CITY users contributory to the COUNTY POTW after consultation with the COUNTY as necessary.
 - 4.1.5 The CITY shall copy the COUNTY on Notices of Violation issued to CITY users contributory to the COUNTY POTW. The CITY shall invite COUNTY pretreatment program staff to any meetings or site inspections for these users.
 - 4.1.6 The CITY shall provide a copy of semi-annual compliance judgment worksheets by February 15 for SIUs contributory to the COUNTY POTW for the period between July and December of the previous calendar year and by August 15 for the period between January and June of each year using available data.
- 4.2 The CITY's sewer use ordinance shall and does include a provision that CITY industrial users who contribute wastewater to the COUNTY POTW must comply with the provisions of the COUNTY sewer use ordinance.
- 4.3 The CITY shall take immediate action to stop any discharge from a CITY user contributory to the COUNTY POTW which is in violation of the CITY or COUNTY sewer use ordinance and immediately notify the COUNTY POTW Director or his designee. This notification shall include the location of the discharge and, if known, type of waste, concentration and volume, and corrective actions planned or taken by the CITY or the user, per the City's approved Enforcement Response Plan. The telephone notification will be followed within 24 hours by facsimile or e-mail transmittals of the notification information.
- 4.4 The CITY shall obtain the COUNTY POTW Director's approval prior to granting a variance to any COUNTY sewer use ordinance requirement.

5. REPRESENTATIONS AND MODIFICATIONS OF AGREEMENT

No officer, official, employee or agent of the COUNTY or the CITY may, or shall have the authority or power to terminate, amend, modify or alter this AGREEMENT or waive any of its conditions so as

to bind the COUNTY or the CITY by making any promise or representation not contained herein, unless such modification or revision is:

5.1 In writing; and

5.2 Formally approved in the same manner as this AGREEMENT is originally approved; and

5.3 Duly executed by all parties hereto.

6. WAIVER

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party to thereafter enforce the same. Nor shall waiver by either party of any breach of any provision hereof be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. No provision of this AGREEMENT shall be deemed to have been waived by either party unless such waiver is in writing and executed with the same formality as this AGREEMENT.

7. CUMULATIVE PROVISIONS

The rights and remedies reserved to the COUNTY and the CITY by this AGREEMENT are cumulative and shall be in addition to and not in derivation of any other rights or remedies which the COUNTY and the CITY may have with respect to the subject matter of this AGREEMENT and a waiver hereof at any time shall have no affect on the enforcement of such rights or remedies at a future time.

8. CAPTIONS TO SECTIONS

Captions to sections throughout this AGREEMENT are for ease of reference only and shall not affect the meaning or interpretation of this AGREEMENT.

9. BREACH/NO TERMINATION

This AGREEMENT may be terminated only by the written agreement of the parties. In the event of breach of this AGREEMENT, the parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

10. NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal agent relationship between the parties hereto and no party is authorized to, nor shall, any party act toward third parties or the public in any manner, which would indicate any such relationship with the other.

11. ENTIRE AGREEMENT

This AGREEMENT and all attachments hereto and all material incorporated herein, represents the entire understanding and agreement of the parties with respect to the subject matter hereof, supersede all prior oral negotiations and can be amended, supplemented, modified or changed only as provided herein.

12. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this AGREEMENT is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this AGREEMENT. In the event any provision or part of this AGREEMENT is held to be void or unenforceable such may be deemed stricken and all remaining provisions shall continue to be valid and enforceable upon the parties hereto.

13. SUCCESSORS AND ASSIGNS

This AGREEMENT may not be assigned by either party without the written consent of the other party. Subject to the foregoing, this AGREEMENT shall be binding upon and its benefits inure to the parties, their successors and assigns. This provision shall not be construed as impeding the right of either party to sell raw wastewater collection and/or treatment services to other governmental entities.

14. NOTICE

14.1 Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail to the parties at the addresses shown below:

DURHAM COUNTY TWWTP	DURHAM CITY
Utility Division Manager/POTW Director	Director of Water Management
5926 NC Hwy 55	101 City Hall Plaza
Durham, North Carolina 27713	Durham, North Carolina 27701

All notice required to be given by telephone, email, or fax, shall be made to the individual currently serving in the position listed above, and, in addition, may be made to other staff members as appropriate.

14.2 APPOINTMENT OF PERSONNEL. Except to the extent provided otherwise in this Agreement, it is agreed that the COUNTY Utility Division Manager/POTW Director shall be designated to carry out the COUNTY's obligations under this Agreement, and the CITY Director of Water Management shall be designated to carry out the obligations of the CITY under this Agreement.

15. DISPUTE RESOLUTION

Any claims, disputes or other controversies arising out of, and between parties to this AGREEMENT which may ensue shall be subject to and decided by the appropriate general court of justice of Durham County, North Carolina.

16. RECITALS

The Recitals are incorporated into this Agreement.

17. COOPERATION AND GOOD FAITH. The COUNTY and the CITY, while meeting their respective regulatory requirements, will work together to collaboratively identify and resolve any potential water quality issues. The parties agree to work together to effectuate the purpose of this Agreement and to act reasonably and in good faith in fulfilling their duties and rights hereunder.

IN TESTIMONY WHEREOF, DURHAM COUNTY has caused this AGREEMENT to be executed by its Chairman, all by the authority of the Durham County Board of Commissioners, its official seal affixed and attested to by the Clerk to the Board, and DURHAM CITY has caused this AGREEMENT to be executed by its Mayor, their corporate seal to be affixed and attested by its Clerk, all by the authority of the DURHAM CITY Council, on the day and year first written above.

The Durham County Board of Commissioners, meeting in regular session on _____, 2013 did approve this Wastewater Pretreatment Program Interlocal Agreement dated _____, 2013.

County of Durham

Chairman, Board of Commissioners

Witness:

Clerk

(S E A L)

The Council of Durham City, meeting in regular session on _____, 2013, did approve this Wastewater Pretreatment Program Interlocal Agreement dated _____, 2013.

Durham City

Mayor

Witness:

Clerk

Approved by:
(as to form only)

City Attorney

(S E A L)